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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/507,060

06/13/2005

Rolf Baenteli

TX/4-32366A

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12/07/2009

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EXAMINER

RAO, DEEPAK R

ART UNIT

PAPER NUMBER

1624

MAIL DATE

DELIVERY MODE

12/07/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



### **DETAILED ACTION**

This office action is in response to the amendment filed on August 3, 2009.

Claims 1, 2, 4, and 8 are pending in this application.

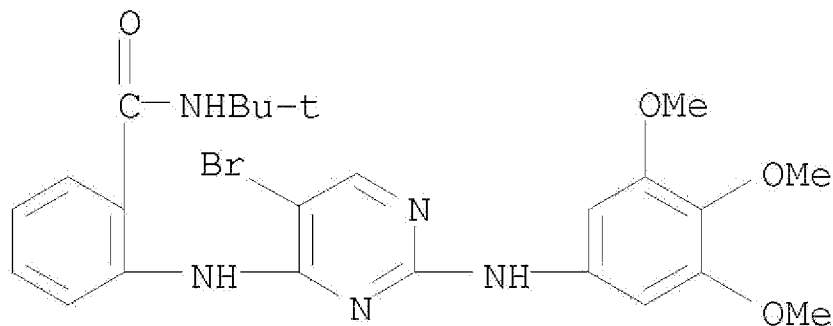
#### ***Withdrawn Rejections/Objections:***

Applicant is notified that any outstanding rejection/objection that is not expressly maintained in this office action has been withdrawn or rendered moot in view of applicant's amendments and/or remarks.

#### ***The following rejections are maintained:***

1. Claims 1, 2, 4 and 8 are rejected under 35 U.S.C. 102(e) as being anticipated by Davis-Ward et al., US 2007/0010668 (effective filing date: February 20, 2003). The instant claims read on reference disclosed compounds that are disclosed to be useful as pharmaceutical agents and useful in the treatment of diseases, e.g., breast cancer. See the compounds of structural formula (I) in page 1, the pharmaceutical use of the compounds in page 12, and the species disclosed in Example 38 (page 36), i.e., the compound: N-(tert-butyl)-2-({5-bromo-2-[3,4,5-trimethoxyphenyl]amino}pyrimidin-4-yl)amino)benzamide (the structure of the compound depicted below for convenience):

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Applicant's arguments have been fully considered but they were not deemed to be persuasive. Applicant argues that 'the compound of Example 38 is not encompassed by the instant claim'. Contrary to applicant's arguments, the reference in fact discloses the above compound in page 36, under Example 38, see the first three lines of paragraph [0399] (depicted below for convenience):

[0399] To a heated (100° C.) mixture of N-(tert-butyl)-2-  
 (5-bromo-2-[(3,4,5-trimethoxyphenyl)amino]pyrimidin-4-yl)amino benzamide (182 mg, 0.182 mmol), tributyl

Accordingly, the rejection is maintained.

2. Claims 1, 2, 4 and 8 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 and 13-22 of copending Application No. 10/549,250.
3. Claims 1, 2, 4 and 8 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 11-23 of copending Application No. 11/377,716.

The reasons provided in the previous office action are incorporated here by reference.

Applicant's request to hold the rejection in abeyance until allowable claims are found in the application is acknowledged.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deepak Rao whose telephone number is (571) 272-0672. The examiner can normally be reached on Monday-Friday from 8:00am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James O. Wilson, can be reached at (571) 272-0661. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**/Deepak Rao/  
Primary Examiner  
Art Unit 1624**

December 4, 2009